

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO.13992 of 2005

Between:

- 1) Sri Jogi Dharmaraju, S/o.Venkateswarlu,
R/o.Penumantra, Penumantra Mandal, W.G.District.
- 2) Smt.Kalidindi Surya Venkata Padmavathi, W/o.Suryanarayna raju,
R/o.Penumanthra in Penumanthra Mandal, W.G.District.

..... PETITIONERS

A N D

- 1) The State of A.P.,

rep by its Secretary, Revenue Department,

Govt of A.P. Hyderabad.

- 2) The Collector, West Godavari district, Eluru.
- 3) The Mandal Revenue Officer, Penumantra Mandal,

West Godavari district.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ order or direction more one in the nature of writ of mandamus, declaring the Proceedings of the 3rd respondent passed in his Rc.No.128/2005(A) dt.01-06-2005 directing eviction of the petitioners from 0-43 Cents in R.S.no.727/1 of Penumantra Village as illegal and arbitrary and pass such other order or orders.

Counsel for the Petitioners: MR. I. RAMAKRISHNA RAO

Counsel for the Respondents: GOVT.PLEADER FOR REVENUE

The Court made the following at the admission stage : (order follows 2nd page)

This writ petition is filed seeking to issue a writ of mandamus declaring the Proceedings dated 01-6-2005 passed in RC.No.128/2005(A) by the third respondent directing eviction of the petitioners from Ac:0-43 cents in RS.No.727/1 of Penumantra village in West Godavari district as illegal and arbitrary.

The case of the petitioners is that Ac:0-43 cents of land situate in RS.No.727/1 of Penumantra village is their ancestral property, claiming that it was registered as Government poramboke, the respondents issue 'D' form patta sometime in 1976 to regularize the occupation of their ancestors in favour of the petitioners. To meet the agricultural expenses and maintenance of their family, the petitioners mortgaged the aforesaid extent of land and in the month of September 2003 obtained loan of Rs.46,747/- from Penumantra Primary Large Sized Co-operative Society Limited, Penumantra.

The first petitioner submits that when the society authorities threatened him to bring the aforesaid property to sale, he sold the same to the second petitioner under a sale deed dated 20-09-2003 but he is continuing in possession of the same, promising to repay the same as consideration under sale deed to second petitioner in small annual instalments.

While things stood thus, on 28-2-2005, the third respondent issued a notice calling upon the petitioners to show cause as to why the said land should not be resumed for violation of condition of non-alienability. The petitioners submitted their

explanation to the third respondent and filed an appeal to the Revenue Divisional Officer, Kovvur, challenging the show cause notice issued by the third respondent, but even before any orders are passed by the Revenue Divisional Officer, Kovvur, the third respondent issued the impugned proceedings directing eviction of the petitioners and taking possession of the same. On the other hand, the Revenue Divisional Officer, Kovvur claims that he has no power to grant stay under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for brevity 'the Act').

The learned counsel for the petitioners submit that assuming for a moment that this land is assigned land, its mortgage in favour of a co-operative society is not prohibited under section 6 of A.P. Assigned Lands (POT) Act and any sale for discharge of such mortgage debt will consequently be saved under the said Act. Even other wise under Section 4 (1) (b) of the Act, if the land is resumed, the same has to be restored in favour of the first petitioner, who is the original assignee and it is only if the first petitioner again commit such mistake, the land in question can be resumed and assigned to any person of the choice of respondents. Now the third respondent is pressurizing the Village Secretary to take possession of the aforesaid land from the petitioners and if the land is taken possession, the first petitioner will be put to starvation, as he do not have any other avocation other than the agriculture.

When the matter came up for admission, both the counsel conceded at the bar that the facts in this writ petition are similar and identical to the facts in WP.No.20778 of 1997, which was disposed of by a Division Bench of this court on 03-02-1998, and requested to dispose of this writ petition also in terms of the judgment in the said writ petition.

I have perused the said judgment of the Division Bench of this court, wherein it was observed as follows :

“Though this writ petition and many other writ petitions are premature, as they have been filed in the absence of any specific orders of eviction or dispossession or demolition, in order to see that the interest of both the parties is safe guarded, we do not like to dismiss the writ petition and we dispose of the writ petition directing the authorities to take appropriate action complying with the observations to be made by us in this regard.

When a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands, jump into the premises, and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities shall pass orders to determine the damages. It is very clear that barring a few cases, in most of the cases, which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition, as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The complaint of the occupants though looks misconceived, but after hearing the arguments, we found that there was an attempt by the Government either to widen the roads or clear the encroachments. But, in our view, before doing that, the authorities have to follow certain principles of natural justice. Hence, the writ petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the following requirements

If the authorities viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupants calling upon them to show cause as to why the proposed action shall not be taken. On receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized

occupation and shall determine whether the property in question belongs to the Government or any other local self-government authority or to the occupants. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forthwith. If the demolition took place in respect of the property of the Government, the question of payment of damages will not arise. The occupants are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this order calling upon the occupants to show cause as to why the action proposed shall not be taken by giving 60 days to file the objections, if any. The person interested viz., the occupants shall submit their objections or explanation within the time stipulated together with any other documents they would like to rely upon in support of their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupants shall produce all the evidence, which they want to rely upon before the Mandal Revenue Officer on the appointed day.

If there is any claim for grant or assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupants. In cases of demolition, the loss caused shall have to be assessed by the Engineer of the area concerned, who, before assessing, shall visit the premises along with the officer concerned and the occupants or the persons interest on the date notified by the concerned officer. The occupants shall appear before the concerned authority on all the dates in order to complete the enquiry at an early date. Till the conclusion of the enquiry by the Mandal Revenue Officer, statusquo obtaining as on today shall continue”

The respondents are directed to issue notice to the petitioners before initiating any action of taking possession of Ac:0-43 cents of land situate in RS.No.727/1, Penumantra village of Penumantra Revenue Mandal, East Godavari district and follow due process of law in terms of the judgment of the Division Bench of this

Court in WP.No.20778 of 1997, dated 03-2-1998.

Accordingly, at the admission stage, the writ petition is disposed of in terms of the said judgment of the Division Bench of this Court in WP.No. 20778 of 1997 dated 03-02-1998. The respondents are directed to follow the guidelines issued in the aforesaid judgment. However, there shall be no order as to costs.

JUNE 30th, 2005. -----

I S L. ELIPE DHARMA RAO, J.

To

1) The State of A.P., rep by its Secretary, Revenue Department,

Govt of A.P. Hyderabad.

2) The Collector, West Godavari district, Eluru.

3) The Mandal Revenue Officer, Penumantra Mandal,

West Godavari district

4) Two CD copies.

5) 1 CC to MR.RAMAKRISHNA RAO.

6) The Govt.Pleader for Revenue, High Court Buildings, High Court of

Andhra Pradesh, Hyderabad.